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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,679	02/05/2002	David Kent	24756	8782

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EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/10/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,679

Applicant(s)

KENT, DAVID

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 12-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claims 14 and 18, “a fourth cut-out portion” is unclear since no third cut-out portion was previously defined in the claim.

The following each lack antecedent basis in the claims, i.e. each element is only inferentially set forth: claim 16, lines 7, 8, and 10, “the intersection of each of said side walls and said bottom wall” and “said second fold line”, claim 17, “the intersection of each of said end walls and said bottom wall”, and claim 18, “the intersection of each of said side walls and said bottom wall”.

In claim 18, last line, “poriton” appears to be misspelled.

The following are each indefinite insofar as a plurality of the recited element were previously set forth in the claims and it is unclear which of the plurality is being referred to: claim 16, lines 9-11, “said first cut-out portion” (two occurrences) and claim 18, lines 3 and 4, “said fourth cut-out portion” and “said first cut-out portion”.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Muise '996. Muise '996 discloses a blank 40 including a bottom wall panel 41, an end wall panel 54, an outer side wall panel 44, an inner side wall panel 48, a first cut-out portion 89, and a second cut-out portion 91 spaced apart from the first cut-out portion and sized differently from the first cut-out portion. Muise '996 also discloses a third cut-out portion formed by another cut-out 91 spaced along the foldline 55 as claimed.

4. Claims 16, 17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith. Smith discloses a container including a bottom wall 22, a pair of double side walls formed by the layers 24, 36 coupled to the bottom wall, a stacking tab 34 coupled to each of the double side walls, first cut-out portions 85, and a second cut-out portion 100 or 120 spaced apart from the first cut-out portions and sized differently from the first cut-out portions. Smith also discloses third cut-out portions 102 along the intersection of the end walls and bottom wall as claimed.

5. Claims 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Southwell et al '296. Southwell et al '296 discloses a container and blank including bottom wall panel 12, end wall panels 18b, 20b, inner and outer side wall panels 14a, 14b, 16a, 16b, first cut-out portions 50a, 62a, second cut-out portions 88, 92 spaced from and sized differently than the first cut-out portions, third cut-out portions 70a, and fourth cut-out portions 30, 52a; 28, 48a as claimed.

Response to Arguments

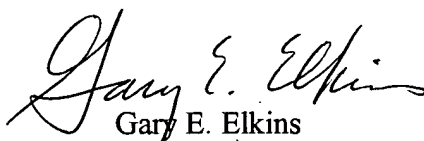
6. Applicant's arguments with respect to claims 12-19 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
04 September 2003